No. 13552
IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

RAFO IVANCEVIC, Consul General of the Federal Peoples' Republic of Yugoslavia,

Appellant,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

JAMES J. BOYLE, United States Marshal,

Appellant,

vs.

ANDRIJA ARTUKOVIC,

Appellee.

On Appeal From the United States District Court for the Southern District of California, Central Division.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE AND APPENDIX.

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Jurisdiction.

Jurisdiction of the District Court and of this court is as set forth in the Brief of Appellants herein.

This Brief *Amicus Curiae* is filed pursuant to written order of this court made and entered on October 3, 1952.

Statutes and Treaty Involved.

The pertinent provisions of the extradition laws of the United States (18 U. S. C. 3181 *et seq.*) and the Extradition Treaty concluded on October 25, 1901, between the United States and Serbia (32 Stats. 1890) are set forth in the footnotes to the opinion of the District Court [R. T. 65-71].

Statement of the Case.

In the proceedings which were instituted in the United States District Court for the Southern District of California, Central Division, the appellee sought, by a petition for writ of *habeas corpus,* to obtain his discharge from provisional arrest and detention with a view to extradition to Yugoslavia.

The facts are set forth in the opinion of the District Court [R. T. 35]. In essence, they are these:

The appellee, Andrija Artukovic, was provisionally arrested and detained with a view to extradition on August 29, 1951, at Los Angeles, California, pursuant to a warrant of arrest issued by Howard V. Calverly, United States Commissioner for the Southern District of California, Central Division, upon a complaint filed on that date by Mr. Rafo Ivancevic, Consul General of the Federal Peoples' Republic of Yugoslavia. The Yugoslav Ambassador in Washington, in a note dated August 30, 1951, addressed to the Secretary of State, formally requested the extradition of the appellee pursuant to the provisions

of the Extradition Treaty of October 25, 1901, concluded between the United States and Serbia.

On September 12, 1951, the appellee filed in the United States District Court for the Southern District of California, Central Division, a petition for a writ of *habeas corpus*. The United States Marshal and the Yugoslav Government appeared, on September 17, 1951, by counsel, in opposition to the granting of the writ. An amended petition, filed on September 19, 1951, challenged the legality of the arrest and, of course, the extradition proceedings which were thereby initiated, on the grounds (1) that there had not been a compliance with applicable statutes; (2) that there was no extradition treaty in force between the United States and Yugoslavia; and (3) that the complaint on which the warrant of arrest had been issued showed on its face that the alleged crimes with which the appellee was charged were political offenses and hence did not warrant extradition either under the extradition statutes of the United States or under the extradition treaty depended upon by the Yugoslav Government in this case.

Counsel for the Yugoslav Government filed, on October 15, 1951, an amended complaint with the United States Commissioner and thereby remedied the defect in the original complaint which was made the basis for the first ground for challenging the legality of the arrest of the appellee.

The appellant and the Yugoslav Government concede that certain political and geographic changes involving

Serbia were effected between October 25, 1901, when the Extradition Treaty between the United States and Serbia was concluded and the present time. The appellant contended, however, that notwithstanding such changes as were effected, the treaty continued in full force and effect and that presently it is in effect between the United States and the Federal Peoples' Republic of Yugoslavia.

Inasmuch as the District Court did not give consideration to the question whether the crimes charged against the appellee are political offenses within the meaning of the treaty, the only question presented for determination by this court is whether the Extradition Treaty concluded on October 25, 1901, between the United States and Serbia is still in force and applicable between the United States and the Federal Peoples' Republic of Yugoslavia.

Interest of the United States.

The proceedings in this case involve the effect of a change in government or a change in the geographical limits, or both, of one party thereto upon the treaty relations of the United States with other governments and not alone its treaty relations with Yugoslavia. The Executive Branch of the Government has proceeded heretofore on the theory that, in the absence of the complete absorption of one of the high contracting parties to the treaty by a third country, a mere change in the form of government or the expansion or contraction of the geographical boundaries of that high contracting party did not affect the termination of the treaty relations with that party.

Consequently, unless the changed conditions were such as to suggest the desirability of new treaties, the prior treaties have been considered as remaining in full force and effect. This practice has been in conformity with the generally accepted principles of international practice and is believed to be sound. A departure from the established practice after this late date could cause great confusion since there is probably no country now existing with which the United States has concluded treaties that has not undergone some change, either with respect to the form of its government or with respect to its boundaries. Heretofore the Department of State has been looked to for a determination of the question whether a specific treaty is still in effect after such changes in government or boundaries. The decision of the District Court, if not reversed, will preclude such a determination.

As the decision, if not reversed, will affect the entire treaty structure, it is believed that the Government's interest in the case transcends in importance the interest of the parties to these proceedings whose sole interest is the matter of the possible extradition of the appellee. The Executive Branch of the Government is not presently concerned with this phase of the case and will not be concerned with it unless and until it shall have been certified to the Department of State by the extradition magistrate pursuant to the provisions of 18 U. S. C. 3184.

Summary of Argument.

I. The general rule of international law and practice sustains the continuance in force of the treaties of a state following a change in its territorial limits or in its form of government; it also sustains application of those treaties to newly annexed territory of a state.

II. Evidence indicates that the state formerly known as Serbia continued as an international juridical entity upon its enlargement into the Kingdom of the Serbs, Croats, and Slovenes in 1918, and consequently the treaty rights and obligations of that state continued in force and applied to the whole of its territory.

III. The United States and the Serb-Croat-Slovene State (later Yugoslavia), as well as other leading countries, have given open and continuous recognition to the continuance in force of the pre-war Serbian treaties and the application thereof to the whole territory of the Kingdom of the Serbs, Croats, and Slovenes, subsequently Yugoslavia.

IV. The United States and the Serb-Croat-Slovene State (later Yugoslavia) have openly and continuously acted, during the entire period since World War I, under and pursuant to the provisions of pre-war treaties concluded between the United States and Serbia.

V. Opinions of United States courts have recognized the force and effect of the treaties of commerce and consular relations concluded in 1881 between the United States and Serbia—treaties which rest their validity upon the same legal grounds as the validity of the 1901 extradition treaty, namely, consideration of Yugoslavia as a true successor State to the Kingdom of Serbia with respect to continuance of its treaty rights and obligations.

ARGUMENT.

I.

The General Rule of International Law and Practice.

The weight of authority among writers on international law, as well as customary international practice, supports the rule that territorial changes of a State, whether by addition or loss of territory, do not in general deprive that State of its rights or relieve it of its obligations under a treaty, unless the changes are such as to render execution of the treaty impossible. In the case of the enlargement of a State by addition of new territory, the weight of authority supports the principle that the territory annexed becomes impressed with the treaty obligations of the acquiring State.

1 Moore, *Digest of International Law* (1906), page 248, states:

> "Mere territorial changes, whether by increase or by diminution, do not, so long as the identity of the state is preserved, affect the continuity of its existence or the obligations of its treaties."

Crandall, *Treaties: Their Making and Enforcement* (2d ed., 1916), page 429, states the application of the rule to the territory annexed as follows:

> "It may be stated as a general principle that the territory of the annexed or incorporated state becomes impressed with the treaties of the acquiring state so far as locally applicable, to be determined in each instance by the character of the particular treaty and the nature of the union. The former Republic of Texas, upon its admission as a State into the Union on terms of equality with the other

States, undoubtedly became bound and privileged by all the treaties of the United States, of which it had become an integral part."

V Hackworth, *Digest of International Law* (1943), page 376, expresses the rule as follows:

"As a general rule territory of the annexed or incorporated state becomes impressed with the treaties of the acquiring state, so far as they are not locally inapplicable. This matter is usually the subject of an understanding between the annexing state and other treaty states at the time of the annexation, or of an affirmative declaration by the annexing state acquiesced in by other treaty countries."

McNair, *The Law of Treaties: British Practice and Opinions* (1938), page 436, states the view of the British Government as follows:

"In the view of the United Kingdom Government the general principle governing the operation of treaties, when the territorial extent of one of the parties has been increased, is that existing treaties automatically apply to the new territory acquired."

Proceeding to a discussion of British treaty relations with certain other countries, McNair states with respect to United States treaties:

"Since the Convention of Commerce of July 3, 1815, was made between Great Britain and the United States of America, much territory has been added to the latter contracting party, but there is no question that this and other treaties of the early nineteenth century apply to the whole enlarged territory of the United States of America."

In further support of the general rule with respect to continuance of treaty rights and obligations regardless of

territorial changes is the Harvard *Research in International Law* published in the *American Journal of International Law,* Supplement, Part III, Law of Treaties, Volume 29 (1935), page 1066.* As a result of that research a draft convention on the Law of Treaties was formulated, containing as Article 26, "Effect of Territorial Changes," the following:

> "A change in the territorial domain of a State, whether by addition or loss of territory, does not, in general, deprive the State of rights or relieve it of obligations under a treaty, unless the execution of the treaty becomes impossible as a result of the change."

The rule as stated in that article is supported by reference to leading European as well as American authorities in international law including F. de Martens, 1 *Traité de Droit International* (Leo trans., 1883), page 370; Rivier 1 *Principes due Droit des Gens* (1896), pages 62-63; Fauchille, 1 *Traité de Droit International Public,* pt. 1 (1922), page 343; 2 Hoijer, *Les Traités Internationaux* (1928), page 474; Fiore, *International Law Codified* (Borchard trans., 1918), Article 151.

It is, furthermore, a universally accepted doctrine in international law that a change in the form of government of a contracting State does not serve to terminate its treaties. Authorities on this point are abundant and unani-

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*Among the notable international law authorities who served as advisers on that research were Benjamin Akzin, Harvard and Radcliffe Bureau of International Research; Charles Cheney Hyde and Philip C. Jessup, Columbia University Law School; George W. Wickersham; George Grafton Wilson, Harvard University; Quincy Wright, University of Chicago; and Green H. Hackworth, formerly Legal Adviser of the Department of State and now a member of the International Court of Justice.

mous. For example, 1 Moore, *Digest of International Law,* page 249, states:

> ". . . though the government changes, the nation remains, with rights and obligations unimpaired. . . .
>
> "The principle of the continuity of states has important results. The state is bound by engagements entered into by governments that have ceased to exist; . . ."

2 Hyde, *International Law* (1945), page 1528, states:

> "It is accepted doctrine in which the United States has long acquiesced, that a change in the form of the government of a contracting State does not serve to terminate its treaties, or necessarily justify the attempt of any party to terminate them."

To the same effect, the Harvard Research into the Law of Treaties (A. J. I. L., Supp., pt. III, Vol. 29 (1935), p. 1044) states:

> "Forms of government and constitutional arrangements in these days are constantly being changed, and if the enjoyment of treaty rights and the duty of performance were dependent upon the continuance of the *status quo* in respect to the governmental organization or constitutional system of the parties, one State would never be able to count with certainty on rights which have been promised it by another. . . .
>
> "Turning now to the opinions of writers on international law, we find that they appear to be in complete agreement that, as a general principle, changes in the governmental organization or constitutional system of a country . . . have no effect on the treaty obligations of States which undergo such changes."

In support of that statement, the Harvard Research (pp. 1046-1055) cites numerous international law authorities from the seventeenth century (Grotius, *De Jure Belli ac Pacis*) to modern times, as well as the decisions of European and American courts and international tribunals. For example, it refers to the case of *Lepeschkin v. Gosweiler* (71 *Journal des Tribunaux et Revue Judiciaire,* 1923, p. 582) in which the Swiss Federal Tribunal stated:

> "It is a principle of international law, recognized and absolutely uncontested, that the modifications in the form of government and in the internal organization of a State have no effect on its rights and obligations under the general public law; in particular they do not abolish rights and obligations derived from treaties concluded with other States."

Customary international practice with respect to application of the treaties of a State to its newly annexed territory has been evidenced on numerous occasions. As can be seen in some of the preceding passages quoted, the United States itself presents an example of such application. There has been no question but that the treaties entered into by the United States during the early years of its history apply to territory annexed to the United States subsequent to that time, including the State of Texas, which was formerly a Republic.

The case of Italy presents a striking similarity to that of Yugoslavia. Between 1859 and 1861 Lombardy, Tuscany, Emilia, Parma, and the Kingdom of the two Sicilies united with Sardinia to form the Italian Kingdom. The Italian Government took the position that only Sardinia, of all those States, had maintained its juridical entity and that the treaties of Sardinia alone had survived the union.

These treaties were considered to have replaced those of the other uniting States and were extended to the whole territory included in the new union. The theory supporting this action was that the new Kingdom of Italy did not constitute a new State, but that instead an existing State, Sardinia, serving as a nucleus, had expanded into a larger State into which a number of other Italian States had been absorbed. It is true that there was considerable controversy among jurists as to the theory at the time; but the Harvard Research Comment cited above points out, on page 1073, the following:

> "The controversy, however, has only an academic interest. The courts of both Italy and France held that the treaty of March 4, 1760, concluded between France and Sardinia, relative to the execution of judgments, survived the formation of the Kingdom of Italy and was applicable throughout the Kingdom of Italy and binding on both countries—this on the theory that the Italian Kingdom was merely an expansion or enlargement of the State of Sardinia. . . . For the French decisions, see, among others, the cases of *La Modérazione* c. *La Chambre d'Assurances* (Court of Paris, 1879), *Mantil* c. *Pompilis* (Tribunal Cor. of the Seine, 1883, 10 *Journal du Droit International Privé,* 1883, p. 500), and *Vincent* c. *Bardini, Dalloz,* 1901, 2.257 and the note thereon by Pic. See also the decision of the Court of Montpellier of July 10, 1872, in the case of *Iconomidis v. Coude* (6 *Journal du Droit International Privé,* 1879, p. 69), where it was emphasized that additions to the territory of a State have no effect upon the State's treaty obligations. . . . For the Italian jurisprudence, see, among others, the decision

of the Italian Court of Cassation of December 3, 1927, in the case of *Gastaldi v. Lepage Héméry* (9 *Rivista di Diritto Internazionale,* 3d ser. 1930, p. 102), where the survival of the treaty of 1760 between France and Sardinia was affirmed, on the principle that the Italian State was merely an expansion of the Kingdom of Sardinia. See also the decisions of various Italian Courts cited or summarized in 5 *Journal du Droit International Privé* (1878), p. 244, and 6 *ibid.* (1879), p. 305 ff.

"It may be added that the Permanent Court of International Justice in the *Case of the Free Zones of Upper Savoy and the District of Gex,* recognized that the treaty of Turin of March 16, 1816, between Sardinia and Switzerland survived the transformations which resulted in the formation of the Italian Kingdom. *Publications of the P. C. I. J.,* Series A, No. 22, p. 18, and Series A, No. 24, p. 17.

"The conclusion deducible from the practice in the case of the formation of the Italian Kingdom is that when a State enlarges its territorial domain by the annexation of other States, its treaties continue to bind it."

Moreover, it has never been required under recognized international law or practice that in order for a treaty to be extended to newly annexed territory the treaty must have contained a specific provision for that purpose. The contention [T. R. 55] that the absence of such a provision in the extradition treaty with Serbia compels the conclusion that the treaty did not survive the series of events following the first World War so as to cover the territories which became part of the Serb-Croat-Slovene

State is not justifiable by legal authority or by precedent. No such provision was contained in the early bilateral treaties of the United States, which nevertheless were applied to this country's newly annexed territory. The comparison of the Serbian extradition treaty with the German extradition treaty under consideration in *Terlinden v. Ames,* 184 U. S. 270 (1902), with respect to the presence or absence of such a provision is not warranted in view of the widely different circumstances surrounding those States at the time the treaties were signed. The German Treaty was signed in 1852 on behalf of "Prussia and other States of the Germanic Confederation"; that confederation was then already in existence; a movement for a stronger union of German States was under way; and Prussia was surrounded by numerous autonomous German States which with considerable likelihood might wish to accede to the treaty. On the other hand, Serbia in 1901, when the extradition treaty was signed, was a single independent nation and there was no immediate likelihood that it would subsequently be joined by States then under the Austro-Hungarian Empire. As pointed out by the court [T. R. 56], "it is historically unlikely that such a provision would have been put in the treaty with Serbia. . . ." To require the presence of such a provision in order to apply a treaty at some later time to the newly annexed territory of a State does not accord with the logic of the situation or with accepted international practice.

II.

Evidence of Continuance of Serbia as an International Juridical Entity Upon Its Enlargement Into the Kingdom of the Serbs, Croats, and Slovenes.

Evidence that the State which had been known as Serbia continued as an international juridical entity upon its enlargement into the Kingdom of the Serbs, Croats, and Slovenes, and hence that it falls within the general rule cited above with respect to the continuance of its treaty rights and obligations and the extension thereof to its newly acquired territory, may be seen in the following:

The Serb-Croat-Slovene State from the outset of its formation in 1918 appears to have regarded itself as a successor State to Serbia, formed by the voluntary union with Serbia of certain other States. The Serbian Chargé d'Affaires submitted to the Department of State of the United States on January 6, 1919, a communication from his Government in which were set forth the facts of the union of the Serbian, Croatian, and Slovene provinces within the boundaries of the former Austro-Hungarian Monarchy "into one single State *with the Kingdom of Serbia* [italics supplied] under the dynasty of His Majesty King Peter [King of Serbia] and under the regency of the [Serbian] Crown Prince Alexander" followed by the decision of the National Assembly of Montenegro to unite with the newly formed Kingdom of the Serbs, Croats, and Slovenes. The communication further stated:

> ". . . His Royal Highness the Crown Prince has declared that he accepts with pleasure and thanks these decisions. A common Government for the King-

dom has been organized on the 21st of December. The Legations, Consulates and other Missions of the Kingdom of Serbia will be the Legations, Consulates and other Missions of the Kingdom of the Serbs, Croats and Slovenes." (*Foreign Relations of the United States,* 1919, Vol. II, p. 892.)

That Serbia was the nucleus about which the Kingdom of the Serbs, Croats, and Slovenes was formed seems clear from a study of the events which accompanied its formation. That Serbia consistently regarded itself as that nucleus and never at any time relinquished its claim to continuity as a State is made doubly clear by its action in accepting the union of other States *to it,* while at the same time declaring the continuance of the Serbian dynasty and the Serbian facilities for conducting international relations.

On pages 16-19 of its opinion the court quotes authorties who refer to the Serb-Croat-Slovene State or Yugoslavia as "a new state," "a new order," etc. The implication is that mere use of the word "new" implies a complete disavowal of and separation from the "old" State; *i. e.,* Serbia. The facts of the case, however, indicate otherwise. At the time of union of the other Serb, Croat, and Slovene provinces with Serbia in 1918, Serbia constituted more than one-third of the total area of the newly enlarged State and approximately one-third of the total population, far exceeding any other single State in the group. The other States turned to Serbia for their rulers, for their seat of government, for their constitutional guarantees. Belgrade, the capital of Serbia, remained the capital of the newly enlarged State. Serbian diplomatic representatives in other capitals of the world became the diplomatic representatives of the Serb-Croat-Slovene State. Serbian

legations, consulates, and missions became the legations, consulates, and missions of the Serb-Croat-Slovene State. The Serbian ruling family remained in power, *accepting* sovereignty over the newly annexed provinces. The Serbian Constitution of 1903 continued in force until the adoption of a new Constitution in 1921. The Christmas Day (1918) proclamation of Prince Regent Alexander proclaimed the duty of the Government

> "to extend immediately to the whole territory of the Kingdom of the Serbs, Croats and Slovenes all the rights and liberties now enjoyed by the Serbs in accordance with the Serbian Constitution." (*Foreign Relations of the United States,* 1919, Vol. II, p. 897.)

It is noteworthy also that the United States Government from the outset regarded Serbia as a continuing State *to which* other States and provinces had joined themselves. In recognizing the new régime, this Government, in a note dated February 10, 1919, addressed to the Minister of the Kingdom of the Serbs, Croats, and Slovenes (*Foreign Relations of United States,* 1919, Vol. II, pp. 899-900) [T. R. 89-90], stated:

> ". . . the Government of the United States welcomes the union of the Serbian, Croatian and Slovene provinces within the boundaries of the former Austro-Hungarian Monarchy *to Serbia* and recognizes the Serbian Legation as the Legation of the Kingdom of the Serbs, Croatians and Slovenes." (Emphasis supplied.)

It was wholly within the constitutional power and prerogatives of the Executive Branch of the United States Government to accord such recognition to the State as a continuing entity.

1 Hyde, International Law (1945), 156;

Oetjen v. Central Leather Company, 246 U. S. 297-302;

United States v. Belmont, 301 U. S. 324, 330;

Guaranty Trust Company of New York v. United States, 304 U. S. 126, 137-139;

1 Hackworth, Digest of International Law, 161-166.

In the *Oetjen* case the court said:

> "The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments of the Government and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."

Regarding the union of the Yugoslav peoples, the Secretary of State made public in Paris on February 7, 1919, the following statement, which like the note quoted above seems to regard the Serbian State as the continuing judicial entity in the newly formed union (Foreign Relations of United States, 1919, Vol. VII, p. 899) [T. R. 89]:

> "On May 29, 1918, the Government of the United States expressed its sympathy for the nationalistic aspirations of the Jugo Slav race and on June 28 declared that all branches of the Slavish race should be completely freed from German and Austrian rule. After having achieved their freedom from foreign oppression the Jugo Slav[s] formerly under Austro-Hungarian rule on various occasions expressed the desire *to unite with the Kingdom of Servia.* The Servian Government on its part has publicly and officially *accepted* the union of the Serb, Croat and Slovene peoples. The Government of the United

States, therefore, welcomes the union while recognizing that the final settlement of territorial frontiers must be left to the Peace Conference for determination according to desires of the peoples concerned." (Emphasis supplied.) (1 Hackworth, *Digest of International Law* (1943), p. 221.)

A communication dated March 24, 1919, from the Minister for the Kingdom of the Serbs, Croats, and Slovenes to the Acting Secretary of State, a copy of which is attached marked Appendix "A-1," gives still another indication that both Governments from the outset regarded the Kingdom of the Serbs, Croats, and Slovenes as a continuation of the Serbian State under a new name. The use of the phrase "the change in the title" of the Government is noteworthy. That communication reads in part:

> "I have received your letter of March 21st, requesting that in view of the change in the title of my Government, I furnish the State Department with full powers running in the name of the new Kingdom of the Serbs, Croats and Slovenes . . .
>
> "I have not failed to communicate with my Government and have asked that in compliance with your request, His Excellency Mr. Dodge be furnished as soon as possible with a copy of the new full powers." (Dept. of State file No. 860 h. 5½.)

In a memorandum of May 31, 1921, copy of which is attached marked Appendix "A-2," the then Solicitor (Legal Adviser) of the Department of State, Fred K. Nielsen, reached the following conclusion in a case which was pending before him for official action:

> "The formation of the Kingdom of the Serbs, Croats and Slovenes apparently presents a situation

different from that arising out of the formation of the German Empire by the amalgamation of several independent states, which united to form a new entity, the German Empire. I believe it may properly be said that Serbia absorbed the territories which came to her as a result of the war and that these territories can properly, from the standpoint of our law, be regarded as covered by our treaties with Serbia . . ." (Dept. of State File No. 711.60h.)

In accordance with the accepted theory regarding continuity of States and their international obligations, the Serb-Croat-Slovene State, as hereinafter indicated, appears to have consistently regarded the Serbian treaties with other countries as continuing in force and applicable to the whole of its territory. That those treaties were likewise so regarded by the Principal Allied and Associated Powers, including the United States, Great Britain, France, Italy, and Japan, is clearly indicated in the preamble to the Treaty between the Principal Allied and Associated Powers and the Kingdom of the Serbs, Croats, and Slovenes for the Protection of Minorities, signed at St. Germain-en-Laye September 10, 1919 (III Treaties, etc., between United States and other Powers, Redmond, 3731 Senate Document 134, 75th Cong., 1 Hudson, *International Legislation,* 1931, p. 312). That preamble reads in part as follows:

"Whereas since the commencement of the year 1913 *extensive territories have been added to the Kingdom of Serbia,* and

"Whereas, the Serb, Croat and Slovene peoples of the former Austro-Hungarian Monarchy have of their own free will determined to unite with Serbia in a permanent union for the purpose of forming a

single sovereign independent State under the title of the Kingdom of the Serbs, Croats and Slovenes, and

"Whereas the Prince Regent of Serbia and the Serbian Government have agreed to this union, and in consequence the Kingdom of the Serbs, Croats and Slovenes has been constituted and has assumed sovereignty over the territories inhabited by these peoples, . . .

"Whereas it is desired to free Serbia from certain obligations which she undertook by the Treaty of Berlin of 1878 to certain Powers and to substitute for them obligations to the League of Nations . . ." (Emphasis supplied.)

The treaty then declares in a clause preliminary to Article 1 that the Serb-Croat-Slovene State, in view of the obligations contracted under the "present" treaty, is discharged from the obligations of Article 35 of the Treaty of Berlin of July 13, 1878.

Further, Article 12 of the treaty provides:

"Pending the conclusion of new treaties or conventions, all treaties, conventions, agreements and obligations between Serbia on the one hand, and any of the Principal Allied and Associated Powers, on the other hand, which were in force on the 1st August, 1914, or which have since been entered into shall *ipso facto* be binding upon the Serb-Croat-Slovene State."

The wording of the preamble, the preliminary clause, and the article quoted above makes it amply clear that in view of the signers of that treaty the former Kingdom of Serbia had been *enlarged* into the Kingdom of Serbs, Croats, and Slovenes; that the latter kingdom at the time of the signing of the treaty was already bound by

all the treaties of Serbia in force at the outbreak of World War I; that a specific treaty clause (that referring to the Treaty of Berlin) was necessary to relieve the Serb-Croat-Slovene State of any such treaty obligations; and that in the absence of such a clause the Serbian treaties continued to bind the Serb-Croat-Slovene State.

Accordingly, Article 12 is merely declaratory of the existing treaty obligations of the Serb-Croat-Slovene State; it does not create those obligations. It describes an existing condition to which it gives formal international recognition. The use of the words *"ipso facto"* in Article 12 is also meaningful. Webster defines that phrase thus: "By the fact or act itself; by the very nature of the case." In effect, then, the Article states not merely that the Serbian treaties shall bind the Serb-Croat-Slovene State but that *by the very fact* that they were in force between Serbia and the other powers on August 1, 1914, they shall bind the Serb-Croat-Slovene State.

Commenting on Article 12, Harvard Research on the Law of Treaties, cited above, has this to say on page 1075:

> "This article appears to have been based on the view that the Yugoslav Kingdom was not a new State but an expansion of the Kingdom of Serbia. Serbia was admittedly the nucleus of the Yugoslav Kingdom, she had concluded treaties with foreign States which were in force at the time of the formation of the Yugoslav Kingdom, and it could hardly be maintained that her union with the other territories destroyed her capacity to perform the treaty obligations which she had assumed prior to the territorial and political transformations which she underwent."

The position of the United Kingdom Government with regard to the treaties of Serbia, already indicated in the above-mentioned Treaty of St. Germain-en-Laye, is clearly stated in McNair, *The Law of Treaties: British Practice and Opinions,* 1938, p. 443:

> *"Serb-Croat-Slovene State.* In the view of the United Kingdom Government this State has succeeded to the treaty obligations of Serbia, except in so far as it has been specifically released from them
>
> . . .
>
> "There seems to be no doubt that this case must be regarded as an enlargement of the territory of an existing State."

The Treaty between the Principal Allied and Associated Powers and the Serb-Croat-Slovene State for the Protection of Minorities, signed at St. Germain-en-Laye September 10, 1919, referred to above, like several other treaties which were bound in with the League of Nations, was never submitted to the United States Senate. This was natural, since ratification of such treaties obviously would have been incompatible with the Senate's refusal to approve United States participation in the League of Nations. Consequently, the United States did not ratify the Treaty with the Serb-Croat-Slovene State for the Protection of Minorities. It *was* ratified, however, by Great Britain, France, Italy, Japan, and the Serb-Croat-Slovene State and entered into force with respect to those governments along with the treaty of peace with Austria on July 16, 1929. (III Treaties, Conventions, etc., Redmond 3149.) The treaty thus became effective, and the provisions contained therein with respect to continuance of the pre-war Serbian treaties were formally confirmed as law among the ratifying States.

On page 20 of its opinion the court notes the fact that after World War I special provision was made in treaties with Germany, Austria, and Hungary regarding continuance in force of pre-war treaties. (III Treaties, Conventions, 3329, 3149, 3539.) From that fact the conclusion is drawn that "it was generally regarded at that time that previous treaties were abrogated unless specifically affirmed or provision made for their affirmation in a treaty ratified by the Senate." [T. R. 63.] It should be remembered, however, that Germany and Austria-Hungary had been at war with the United States and that the force of certain of their treaties with the United States may have been considered affected by that state of war. It is considered desirable, in bringing to an end a state of war, to have included specific treaty provisions regarding pre-war treaties for the following reasons: (1) that the victorious countries may determine which of their pre-war treaties with the vanquished States should be applied upon the return to peaceful relations; (2) that any doubts as to the status of particular treaties as a result of a war may be completely resolved; and (3) that a State which considers all treaties terminated *ipso facto* by a state of war may have a convenient procedure for reviving pre-war treaties. Serbia, however, was never at war with the United States and therefore the continuance in force of treaties between the two countries was never interrupted by reason of war. Consequently, the situation which existed between the United States and Serbia is not analogous to the situation which existed between the United States and Germany, Austria, or Hungary in regard to the purpose to be served by a specific treaty provision with respect to the application of pre-war treaties.

III.

Open and Continuous Recognition by the United States and Yugoslavia of the Continuance in Force of the Pre-war Serbian Treaties and of Their Enlarged Application.

The fact that the United States did not ratify the Treaty of St. Germain-en-Laye with the Serb-Croat-Slovene State makes the events that followed even more significant. On June 4, 1921, the Secretary of State addressed to the Minister of the Kingdom of the Serbs, Croats, and Slovenes in Washington a formal note, copy of which is attached marked Appendix "A-4." This inquired whether it was the view of the Government of the Kingdom of the Serbs, Croats, and Slovenes that the treaties which were in force between Serbia and the United States at the time of the formation of the Kingdom of the Serbs, Croats, and Slovenes were applicable to those parts of the new Kingdom not comprised within the territories of the former Kingdom of Serbia. It made particular reference to three treaties: the commercial convention of 1881, the consular convention of 1881, and the extradition treaty of 1901. (22 Stat. 963; 22 Stat. 968, and 32 Stat. 1890.) It is possibly worthy of note that the United States Government did not inquire the view of the Serb-Croat-Slovene Government with respect to *continuance in force* of the Serbian treaties; that appears to have been well settled. It inquired only with respect to the application of the treaties to territory not formerly comprised within the Kingdom of Serbia.

In reply, the Chargé d'Affiaires by a note dated September 29, 1921, copy of which is attached marked Appendix "A-3," stated that the Government of the Kingdom of

the Serbs, Croats, and Slovenes considered the treaties and conventions concluded between Serbia and the United States "as applicable to the whole territory of the Kingdom of the Serbs, Croats and Slovenes as constituted at present." (Note P. No. 429, Dept. of State file No. 711.60 H/3; V Hackworth, p. 375.)

Thus as early as 1921 the Serb-Croat-Slovene State in a formal diplomatic note to the United States Government had acknowledged not only the continuance in force of the pre-war Serbian treaties with the United States but the application of those treaties to the newly acquired territory.

In connection with this exchange of notes, 2 Hyde, *International Law* (1945), p. 1535, states:

> "It was logical and natural that the Government of the Kingdom of the Serbs, Croats and Slovenes, should have acknowledged to that of the United States in 1921, that it considered the treaties and conventions concluded between the Kingdom of Serbia and the United States as applicable to the whole territory of the Kingdom of the Serbs, Croats and Slovenes, as then constituted. The latter Kingdom embodied, in a territorial sense, the enlargement of the former Kingdom, and was the same State with a bigger body. It was also reasonable to contend, as did the United States in substance in 1921, that that Kingdom should regard those agreements as applicable to its territory which had formerly belonged to the Austro-Hungarian Empire."

From that time forward the Department of State, in reply to inquiries, particularly with respect to the commercial convention of 1881 the provisions of which were constantly being invoked in the carrying on of trade be-

tween the two countries, stated unequivocally that the treaties with Serbia were in force and applicable to the whole Kingdom, including territory not part of Serbia before the World War of 1914-1918. (V Hackworth, Digest of International Law, 375.)

The note of Secretary of State Hughes, dated June 4, 1921, to Defrees, Buckingham, and Eaton (cited in footnote 16 of the court's opinion and in V Hackworth p. 375) is of interest only as an indication that even prior to the receipt of the formal view of the Serb-Croat-Slovene State it was the considered opinion of the Department of State that the pre-war Serbian treaties applied to the newly acquired territory.

Thus far the continuance in force and enlarged application of the pre-war Serbian treaties appears to have been a decision taken and carried out by the Executive Branch of this Government. Based on accepted international practice and the acknowledged power of the President to conduct foreign relations, it was altogether proper that the Executive Branch should make the decision that the juridical entity which had been Serbia was continued in the enlarged Serb-Croat-Slovene State.

1 Hyde, International Law (1945), 156;

Oetjen v. Central Leather Company, 246 U. S. 297-302;

United States v. Belmont, 301 U. S. 324, 330;

Guaranty Trust Company of New York v. United States, 304 U. S. 126, 137-139;

1 Hackworth, Digest of International Law, 161-166.

In 1928, however, the Congress of the United States in effect confirmed that Executive decision. By an Act approved March 30, 1928 (45 Stat. 399), it authorized the settlement of the indebtedness of the Kingdom of the Serbs, Croats, and Slovenes. In that settlement the debts of the Kingdom of Serbia to the United States were assumed by the Kingdom of the Serbs, Croats, and Slovenes and incorporated in the total amount of indebtedness on the same basis as the debts incurred by the latter Kingdom.

Reference here is to the fact that the "Principal of obligations acquired for cash advanced under Liberty Bond Act . . . $26,126,574.59," which is set forth in the Act of Congress was obviously calculated on the basis of the cash advanced to Serbia from August 1917 to November 1918, amounting to over 10 million dollars, plus advances of about 16 million in 1919, after the proclamation of the Serb-Croat-Slovene State. (See pp. 318-325, Combined Annual Reports of the World War Foreign Debt Commission.)

Congress thus endorsed the principle that the Serb-Croat-Slovene State was a continuation of the juridical entity that had been Serbia, to the extent that it would inherit Serbia's debts. Bynkershoek, *Questionum Juris Publici* (lib. II, ch. XXV, sec. 1, *Classics of International Law,* Frank trans., p. 276), as quoted in Harvard Research, page 1046, states:

> "The nation, however, is not changed with a change in the form of government. The same is certainly true of a state when it is governed now by this form, now by that. Otherwise one might suppose that a state in its present form is freed from the agreements and debts contracted under a different

form of government. Grotius agrees that this does not hold true in the case of debts; and the same argument that holds in the case of debts applies convincingly to agreements."

In 1945, following the establishment of the Federal Peoples' Republic of Yugoslavia, the Yugoslav Government confirmed its continued recognition of existing treaties and agreements with the United States. The United States Government, in a communication which specifically noted Yugoslavia's confirmation of the existing treaties and agreements, extended recognition to the Yugoslav Republic on April 16, 1946. This exchange of communications was noted by the court in its opinion [T. R. 42], and in footnote 5 thereof [T. R. 75]. This exchange is not the sole basis on which the Department of State relies in its assertion that the 1901 extradition treaty is in force with Yugoslavia. Contrary to that implication, it can be seen from the history of prior events as outlined herein that that exchange was but another step in the continuing chain of circumstances which proves the open and continuous recognition by the United States and Yugoslav Governments of the pre-war Serbian treaties.

The three United States-Serbian treaties which had been in force prior to World War I, including the extradition treaty, have been constantly carried on the records of the Department of State as treaties in force with the Serb-Croat-Slovene State and subsequently with Yugoslavia. In addition, from 1921 on, the Department has publicly and continuously declared the continuance in force of those treaties and their application to the Serb-Croat-Slovene State (Yugoslavia) as a whole.

Also evidencing the open and public recognition given by this Government of the continuance of the Serbian

treaties are the Department's various treaty publications. For example, the compilation entitled *A List of Treaties and Other International Acts of the United States of America in Force December 31, 1932,* published by the Department in 1933, and a revision thereof published in 1941, carries as in force with Yugoslavia the 1901 treaty of extradition as well as the 1881 commercial and consular conventions. The loose-leaf treaty publication, *United States Treaty Developments,* started in 1947 has continuously carried in Appendix III(C) the following statement with regard to Yugoslavia:

> "The treaties in force between the United States and Serbia at the time of the formation of the Kingdom of the Serbs, Croats and Slovenes (Dec. 1, 1918) were regarded by the Governments of the United States and the new Kingdom as applicable to the new Kingdom. State Department file 711.60h/1 and 3. The adoption of 'Yugoslavia' in place of 'the Kingdom of the Serbs, Croats and Slovenes' as the official title of the Kingdom on October 3, 1929, is understood not to have affected treaty relations.
>
> "The establishment of the Federal People's Republic of Yugoslavia (November 1945) is understood not to have affected treaty relations between the United States and Yugoslavia. (Subsequent to the establishment of that Republic, the Yugoslav Government confirmed its continued recognition of existing treaties and agreements between the United States and Yugoslavia, and United States recognition of that Republic was extended on April 16, 1946.)"

Important evidence of the continuing force of the 1901 extradition treaty concluded with Serbia appears in connection with proposals in 1925 and 1927 for a new extradition treaty between the United States and the Kingdom

of the Serbs, Croats, and Slovenes. Two successive Secretaries of State, Charles Evans Hughes on January 8, 1925, and Frank B. Kellogg on March 23, 1927, formally and officially, in instructions to the American Minister in Belgrade took the position that the 1901 treaty was applicable to the whole Kingdom of the Serbs, Croats and Slovenes. The instruction, copy of which is attached marked Appendix "A-5," signed by Secretary Hughes reads:

> "On September 29, 1921, the Yugoslav Charge d'Affaires ad interim informed the Department that the Government of the Kingdom of the Serbs, Croats and Slovenes considered the treaties and conventions in force between the United States and the former Kingdom of Serbia as applicable to the whole territory of the Kingdom of the Serbs, Croats and Slovenes as at present constituted. In view of this assurance and inasmuch as the extradition convention concluded by the United States and Serbia on October 25, 1901, is, in the opinion of this Government, a modern and comprehensive convention, the Department before considering the negotiation of a new extradition convention would desire to be more fully informed as to what useful purpose would thus be served." (Inst. No. 543, to the American Minister, Belgrade, dated January 8, 1925. Dept. file No. 760 h.00/12.)

The Yugoslav proposal for the negotiation of a new extradition convention in 1924 carried with it no suggestion that the convention of 1901 was not still in force. In a despatch dated February 14, 1925, copy of which is attached marked Appendix "A-6," in reply to the instruction from which the above was quoted, Minister Dodge said that the Director of the Treaties Section of the Yugo-

slav Foreign Office explained that it was desired "to make the new convention accord more completely" with the criminal legislation in the territories formerly belonging to Austria-Hungary and now forming part of Yugoslavia.

When this Government, on August 7, 1926, initiated steps to negotiate certain treaties with the Yugoslav Government "to supersede" early instruments on the same subjects, the Yugoslav Government again suggested the negotiation of a new extradition convention, among others. Thereupon Secretary Kellogg, in virtually the same words that Secretary Hughes had previously employed on this subject, instructed Minister Prince in Belgrade, on March 23, 1927, as follows:

> 'With regard to the negotiation of a new extradition convention you will recall that in instruction No. 543 of January 8, 1925, the Department pointed out that the extradition convention between the United States and Serbia, which is regarded both by this Government and the Government of the Serbs, Croats and Slovenes as being applicable to the whole territory of the Kingdom, is a modern and comprehensive convention. Pending the receipt of the more specific information concerning the proposal of the Government of the Serbs, Croats and Slovenes to supplant this convention which it is indicated on page 2 of despatch No. 2577 of February 14, 1925, would be furnished you, the Department is unwilling to consider the negotiation of a new treaty on this subject." (Inst. No. 64 to Belgrade, dated March 23, 1927. Dept. file No. 711.60 h 2/1. Printed in For. Rel., 1927, Vol. III, pp. 842-843.)

In 1934 the Yugoslav Government unequivocally stated, in a note verbale addressed to the American Legation in

Belgrade, that the 1901 extradition treaty was then in force. The American Legation had inquired of the Yugoslav Foreign Office whether the Yugoslav Government would agree to a supplemental extradition treaty with the United States adding to the list of extraditable crimes "crimes or offenses against the bankruptcy laws." The reply of the Yugoslav Government, copy of which is attached marked Appendix "B-1," reads in part as follows:

> ". . . the Royal Ministry for Foreign Affairs has the honor to inform the Legation that in the opinion of the Royal Ministry of Justice the extradition of criminals for offenses mentioned in the aforementioned note is already provided for under Article II, No. 7, of the above cited Convention [Convention of October 12/25, 1901] . . .
>
> "As 'crimes or offenses against bankruptcy laws' are punishable by virtue of the provisions of the Penal Code of the Kingdom . . . it will be sufficient in each particular case, that the competent American authorities propound a legalized extract of the legislative provisions indicating that such crimes are also punished under the laws of the United States of America, and *the extradition requested will, in such case, be granted according to the Convention for extradition of criminals of 1901, which is now in force.*" (Emphasis supplied.) (Note p. No. 13524-IV of May 19, 1934; Dept. of State file No. 211.60H/10.)

As further public and formal evidence of the fact that both Governments regarded the United States-Serbian treaties as remaining in force, references to such treaties have been included in subsequent international agreements with Yugoslavia.

In an agreement between the United States and Yugoslavia effected by an exchange of notes at Washington signed May 4 and October 3, 1946, both the United States and Yugoslavia notes contain the following language:

> ". . . the most-favored-nation provisions of the Treaty for Facilitating and Developing Commercial Relations between the United States and Yugoslavia signed October 2/14, 1881 shall not be understood to require the extension to Yugoslavia of advantages accorded by the United States to the Philippines."

That agreement of 1946 was published in the Treaties and Other International Acts Series, as TIAS 1572, and in the *United States Statutes at Large,* Volume 61(3), page 2451.

An agreement between the United States and Yugoslavia, signed at Washington July 19, 1948, concerning settlement of pecuniary claims against Yugoslavia contained as Article 5 the following:

> "The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favorable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, *in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.*" (Emphasis supplied.)

This agreement was published in the Treaties and Other International Acts Series, as TIAS 1803, and was included in the *United States Statutes at Large,* Volume 62(3), page 2658.

Thus by formal international agreements between the United States and Yugoslavia, both governments have on two occasions officially recognized the United States-Serbian commercial convention of 1881 as continuing in force between the United States and Yugoslavia.

In the light of the numerous public declarations by this Government regarding continuance of the treaties and the inclusion of references to such existing treaties in other formal international agreements, it is difficult to perceive how it could properly be maintained either that Yugoslavia was not aware of the continuance in force of the extradition treaty or that the Senate of the United States had been deprived of the opportunity of extending its approval of application of the treaty with Serbia to the other States later forming part of the Kingdom of the Serbs, Croats and Slovenes. The Senate, in the light of the foregoing facts, must be presumed to have been aware of the application of the Serbian treaties to Yugoslavia and to have acquiesced in the power of the Executive branch of the Government to so consider their application. Yugoslavia, on its part, had given formal and official diplomatic assurance of the application of those treaties to all of its territories.

IV.

Open and Continuous Action by the Governments of the United States and Yugoslavia Under the Serbian Treaties.

It is noteworthy that an examination of the record reveals that both the United States Government and the Government of the Serb-Croat-Slovene State, and subsequently Yugoslavia, have acted openly and continuously under the provisions of the United States-Serbian treaties.

For example, the day-to-day consular relations between the United States and Yugoslavia are carried on under the terms of the consular convention of 1881 concluded between the United States and Serbia. Yugoslav consular officers are permitted to carry on their official work in various cities of the United States on a most-favored-nation basis, resting on the existence and validity of a consular convention assuring reciprocal treatment to American consular officers in Yugoslavia. That convention is, of course, the 1881 consular convention concluded with Serbia. (22 Stat. 968.)

In like manner commercial relations between nationals and companies of the United States and Yugoslavia in the territory of the other are carried on under the terms of the commercial convention of 1881 between the United States and Serbia. (22 Stat. 963.) Such rights as the right of entry, travel, and residence for business purposes, the right to acquire, possess, and dispose of property, the right to exemption from military service, the right of access to courts of justice, and numerous other rights

have been consistently exercised, and are at this very moment being exercised, by nationals and companies of both countries under and in conformity with the terms of the 1881 treaty. To the knowledge of this Government, the validity of that treaty has not been questioned by the nationals or companies of either country acting under its provisions or bringing action under its provisions in a court of law.

The fact that action under the 1901 extradition treaty has not been taken with the same frequency and continuity arises, not from any difference in the force or effectiveness of the treaty, but in the very nature of the treaty itself. Extradition is not a subject of every-day application. It is altogether possible that neither party to an extradition treaty would request action under it for a period of many years at a time; it is possible even that action under an extradition treaty would never be requested. The force of the treaty is none the less real and the obligations of the parties to it none the less clear.

It is important to bear in mind in this respect that the extradition treaty rests for its validity on the same grounds as do the consular and commercial conventions of 1901; namely, that Yugoslavia is a true successor State to Serbia in so far as the continuance of treaty rights and obligations is concerned. If any one of those treaties can be considered in force, by the same token all must be considered in force.

V.

Opinions of United States Courts.

Courts in the United States on several occasions have considered cases in which reliance was placed upon the effectiveness as between the United States and Yugoslavia of the 1881 treaties of commerce and consular rights concluded between the United States and Serbia. By their decisions in those cases the courts have in effect recognized the continuance in force of the pre-war United States-Serbian treaties.

In *Lukich v. Department of Labor and Industries,* 176 Wash. 221, 22 P. 2d 388 (1934) the court made the following statement:

> ". . . December 27, 1882, a 'Convention of Commerce and Navigation' between the Kingdom of Serbia and the United States, which had theretofore been negotiated, was proclaimed. It is conceded that the present kingdom of Yugoslavia has replaced and absorbed the kingdom of Serbia, and that the convention above referred to is now in full force and effect between Yugoslavia and the United States . . ."

In *Urbus v. State Compensation Commissioner,* 113 W. Va. 563, 169 S. E. 164 (1933), the court held that the consular convention concluded with Serbia in 1881 must be given due significance as the law of the land in applying a state statute to a citizen of Yugoslavia. The opinion stated in part:

> "Yugoslavia, according to 23 Encyclopedia Britannica (14th ed.), page 916, is 'a convenient name for the Serb, Croat and Slovene State which originated at the end of 1918 by the union of parts of

the former Austro-Hungarian Empire with Serbia, and at a slightly later date with Montenegro.' The treaty between the United States and the other Principal Allied Powers on the one hand and The Serb-Croat-Slovene State on the other hand, signed at Saint Germain-en-Laye, on September 10, 1919, provided that all treaties between Serbia and any of the Principal Allied Powers which were in force on August 1, 1914, should be binding on the Serb-Croat-Slovene State. The treaty between the United States and Serbia in force in 1914, contained the following provisions: . . . [Here followed a quotation from the treaty].

"The Constitution of the United States, article 6, makes this treaty a portion of 'the Supreme Law of the Land,' and provides that 'the Judges of every State shall be bound thereby.' Consequently the treaty must be given due significance in applying a state statute . . ."

In another case, *Olijan v. Lublin,* 50 N. E. 2d 264 (1943), the court ruled inadmissible in evidence the affidavit of the Minister of Yugoslavia to the United States on the grounds that it failed to comply with the requirements regarding the taking of testimony of consular officers set out in the treaty of 1881 concluded between the United States and Serbia. In its opinion the court stated:

"It must be noticed in this case that the Consul General of the Kingdom of Yugoslavia has . . . invoked the jurisdiction of the court for the determination of the legal status of one of the subjects of the Kingdom of Yugoslavia. It would seem to follow that the evidence of its own ministers or consular officers should be presented in accord with its treaty provisions. The record in the case, insofar

as the affidavit or certificate of the Minister of the Kingdom of Yugoslavia, fails to show that any of the requirements of the treaty were complied with before such testimony was taken."

The extradition treaty of 1901 is valid and effective between the United States and Yugoslavia on the same historical and legal grounds as are the 1881 treaties which were recognized by the courts in the above-cited cases. A holding that the extradition treaty is not in force is contrary to the decisions of the courts in those cases and a long record of continuous, open, and unchallenged action by both the United States and Yugoslavia under the pre-war United States-Serbian treaties.

In the case of *In re Thomas,* 12 Blatchf. 370, 23 Fed. Cas. 927, 930, which involved a request for extradition to Germany, the Circuit Court for the Southern District of New York said:

> "It is further contended, on the part of Thomas, that the convention with Bavaria was abrogated by the absorption of Bavaria into the German Empire. . . . In the present case, the mandate issued by the government of the United States shows that the convention in question is regarded as in force both by the United States and by the German empire, represented by its envoy, and by Bavaria, represented by the same envoy. The application of the foreign government was made through the proper diplomatic representative of the German empire and of Bavaria, and the complaint before the commissioner was made by the proper consular authority representing the German empire and also representing Bavaria. It is also objected, that the complaint is insufficient. This objection is not tenable."

The opinion in the *Thomas* case was cited with approval in the case of *Terlinden v. Ames,* 184 U. S. 270, 287-288. The Supreme Court added:

> "We concur in the view that the question whether power remains in a foreign State to carry out its treaty obligations is in its nature political and not judicial, and that the courts ought not to interfere with the conclusions of the political department in that regard."

The United States District Court for the Southern District of New York held, with respect to commercial treaties concluded between the United States, on the other hand, and Prussia and certain Hanseatic cities, that those treaties continued in force after the formation of the German Empire. *The Sophie Rickmers,* 45 F. 2d 413, 418.

The Supreme Court, in the case of *Disconto Gesellschaft v. Umbreit,* 208 U. S. 570, 581, said, with respect to the Commercial Treaty of May 1, 1828 between the United States and Prussia:

> "This treaty is printed as one of the treaties in force in the compilation of 1904, p. 643, and has undoubtedly been recognized by the two governments as still in force since the formation of the German Empire. See *Terlinden v. Ames,* 184 U. S. 270; Foreign Relations of 1883, p. 369; Foreign Relations of 1885, pp. 404, 443, 444; Foreign Relations of 1887, p. 370; Foreign Relations of 1895, part one, 539.
>
> "Assuming, then, that this treaty is still in force between the United States and the German Empire, and conceding the rule that treaties should be liberally interpreted with a view to protecting the citizens

of the respective countries in rights thereby secured, is there anything in this article which required any different decision in the Supreme Court of Wisconsin that that given? . . ."

It may be observed in this relation that the Supreme Court cited the case of *Terlinden v. Ames.* It cited also the correspondence set forth in the volumes of the Foreign Relations for the years 1883, 1885, 1887 and 1895 wherein the Department of State had taken the position that the Treaty of May 1, 1828 was in force with respect to the German Empire. Unlike the Extradition Convention involved in the *Terlinden* case, the Commercial Convention of 1828 was not specifically revived or kept in force by a later treaty.

Conclusion.

For the foregoing reasons, it is respectfully submitted that the decision of the District Court granting the writ of *habeas corpus* should be reversed.

WALTER S. BINNS,
United States Attorney.

CLYDE C. DOWNING,
Assistant United States Attorney,
Chief of Civil Division.

ARLINE MARTIN,
Assistant United States Attorney.

Attorneys for the United States.

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

No. 426

THE NATIONAL ARCHIVES

ll to whom these presents shall come, Greeting:

I Certify *That the annexed copy, or each of the specified number of*
d copies, of each document listed below is a true copy of a document
official custody of the Archivist of the United States.

ecimal File, 1910-1929:
File Number 860h.51/2 dated March 24, 1919.
Memorandum from Fred K. Nielsen dated May 31, 1921.
File Number 711.60h/1 dated June 4, 1921.
File Number 711.60h/3 dated September 29, 1921.
File Number 760h.00/12 dated January 8, 1925.
File Number 760h.00/16 dated February 14, 1925.

These documents are from the General Records of the
t of State.

stimony whereof, *I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the* Acting Chief Archivist, Diplomatic and Judicial Branches *of the National Archives, in the District of Columbia, this* 3rd *day of* February *19* 52.

Wayne C. Grover
Archivist of the United States

By Carl L. Lokey

Appendix "A-1" to "A-6"

GSA FORM
August 19
(Formerly

GSA—WASH DC 51-7873

LEGATION OF THE KINGDOM
OF THE
SERBS, CROATS AND SLOVENES

PN: 224

Washington 24 March 1919

My dear Mr. Polk,

I have received your letter of March 21st, requesting that in view of the change in the title of my Government, I furnish the State Department with full powers, running in the name of the new Kingdom of the Serbs, Croats and Slovenes, ratifying whatever action has been taken on my part with reference to loans by the United States to my Government and confirming my powers to enter into agreements with the United States regarding loans, and to sign obligations for advances thereon, and to take such further action as may be necessary or desirable in the premises.

I have not failed to communicate with my Government and

Hon. Frank L. Polk
Acting Secretary of State

have asked that in compliance with your request, His Excellency Mr. Dodge be furnished as soon as possible with a copy of the new full powers. I have asked also that a duplicate of the powers be sent to me, and I will forward the document, as soon as I receive it, to the State Departement

Believe me,

Yours very sincerely

L. G. Gravitch

Department of State

Office of the Solicitor

May 31, 1921.

The formation of the Kingdom of the Serbs, Croats and Slovenes apparently presents a situation different from that arising out of the formation of the German Empire by the amalgamation of several independent states, which united to form a new entity, the German Empire. I believe it may properly be said that Serbia absorbed the territories which came to her as a result of the war and that these territories can properly, from the standpoint of our law, be regarded as covered by our treaties with Serbia. In due course an understanding can be reached with Jugo-Slavia on the subject. The government of that country has, I think, already indicated that it considers the old Serbian treaties applicable to the present Kingdom.

FLN:HLC
SO-

LEGATION OF THE KINGDOM
OF THE
SERBS, CROATS AND SLOVENES
WASHINGTON, D.C.

P No. 429.

NE
So

The Chargé d'Affaires ad interim of the Kingdom of the Serbs, Croats and Slovenes presents his compliments to the Secretary of State, and, referring to the latter's note verbale of June 4, 1921, 30 711.60h/1, has the honor to advise him that the Government of the Kingdom of the Serbs, Croats and Slovenes considers the treaties and conventions concluded between the Kingdom of Serbia and the United States as applicable to the whole territory of the Kingdom of the Serbs, Croats and Slovenes as constituted at the present.

Washington, D.C.,
September 29, 1921.

"A-3"

The Secretary of State presents his compliments to the Minister of the Serbs, Croats, and Slovenes and has the honor to inquire whether it is the view of the Government of the Kingdom of the Serbs, Croats, and Slovenes that the treaties and conventions which were in force between the Kingdom of Serbia and the United States at the time of the formation of the Kingdom of the Serbs, Croats, and Slovenes are applicable to those parts of the new Kingdom which were not comprised within the territories of the former Kingdom of Serbia.

The inquiry is made in particular with reference to the Convention of Commerce and Navigation, concluded on October 14, 1881; the Consular Convention, concluded on October 14, 1881; and the Extradition Treaty, concluded on October 25, 1901.

Alvey A. Adee.

June 1, 1921.

Department of State.

"A-4"

No. 543

The Honorable

H. Percival Dodge,

American Minister,

Belgrade.

Sir:

The Department has received your confidential despatch No. 2441, of September 2, 1924, reporting that the Yugoslav Government is preparing drafts for a commercial treaty, consular and extradition conventions, and a convention for judicial assistance, which it intends to submit through the Legation for negotiation with the United States.

Note is made of the statement made to you by the Director of the Treaties Section of the Foreign Office that the Yugoslav Government has made progress in the consideration of the naturalization convention proposed by this Government and that the delay in the matter has been due to a desire to await the passage of the new Yugoslav nationality law, which it was expected would be presented to the Parliament during the next session.

On September 29, 1921, the Yugoslav Chargé d'Affaires ad interim informed the Department that the Government of the Kingdom of the Serbs, Croats and Slovenes

760.h/21

Slovenes considered the treaties and conventions in force between the United States and the former Kingdom of Serbia as applicable to the whole territory of the Kingdom of the Serbs, Croats and Slovenes as at present constituted. In view of this assurance and inasmuch as the extradition convention concluded by the United States and Serbia on October 25, 1901, is, in the opinion of this Government, a modern and comprehensive convention, the Department before considering the negotiation of a new extradition convention would desire to be more fully informed as to what useful purpose would thus be served.

The United States is not a party to any convention providing for mutual judicial assistance and the Department is not sufficiently informed as to the proposals which might be made by the Yugoslav Government in a draft of such a convention to be able to indicate whether it would be viewed favorably by this Government. As a help to the Department in reaching a decision on this matter, you are requested to transmit a copy of any such convention which the Yugoslav Government may already have concluded or to request of the Foreign Office a synopsis of the principal features of the draft which it is proposed to submit to the United States. You should make it understood, however, that this Government holds, for the present, in reserve its decision as to

whether

whether it will enter into negotiations for the conclusion of a convention providing for mutual judicial assistance.

This Government will be glad in due course to negotiate with the Yugoslav Government for the conclusion of a treaty to replace the convention of commerce and navigation and the consular convention concluded by the United States and Serbia on October 14, 1881.

For reasons indicated below, however, the Department considers that it might be desirable if definite action with respect to beginning such negotiations were postponed for a time. A general treaty of commerce, navigation and consular rights concluded by the United States with Germany on December 8, 1923, is under consideration by the Senate. In the event that the Senate gives its approval to the ratification of that Convention, this Government probably would desire to negotiate a treaty with Yugoslavia on the same general lines with, of course, such alterations as particular local conditions may make necessary. The treaty signed by the United States and Germany contains provisions for the regulation of the consular establishments of the two countries which would render a separate convention to cover consular matters unnecessary between the United States and any country with which a similar convention may be concluded. Pending action by the Senate on the treaty between the United States and

Germany

Germany, the Department desires to defer the negotiation of commercial treaties and consular conventions with other countries.

It would be helpful, therefore, if, without discouraging the suggestion which has been put forward by the Yugoslav Government for the conclusion of a new commercial treaty and consular convention with the United States, you could discreetly bring it about that the submission of drafts to you be deferred for a short period. Should the matter not be raised further by the Yugoslav Government, you may consider it best not to make any mention of possible negotiations for a treaty of commerce or a consular convention until the Department instructs you further.

In case a situation develops which makes the negotiation of a general treaty of commerce, navigation and consular rights between the United States and Yugoslavia desirable, the Department would see no objection to the negotiations being conducted through the Legation at Belgrade, as the Yugoslav Government apparently desires.

I am, Sir,

Your obedient servant,

~~For the Secretary of State:~~

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LEGATION OF THE
UNITED STATES OF AMERICA

Belgrade, February 14, 1925.

Despatch No. 257

CONFIDENTIAL.

The Honorable

The Secretary of State,

Washington.

Sir:

I have the honor to acknowledge the receipt on the 29th ultimo of your Instruction No. 543, File No. 760h.62/12, dated January 8th last, in reply to my Despatch No. 2441 of September 2nd, 1924, reporting that the Yugoslav Government was preparing drafts of a Commercial Treaty, Consular and Extradition Conventions and a Convention for Judicial Assistance which it intended to submit for negotiation with the United States.

In reply I beg to state that I have had a conversation with Dr. Ribarj, the Director of the Treaties Section of the

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the Foreign Office, who has informed me as follows regarding the matters mentioned in your Instruction:

Regarding the Naturalization Convention proposed by the Department the negotiation of which has been delayed by the desire to await the passage of the proposed new Yugoslav nationality law, Dr. Ribarj stated that owing to parliamentary difficulties, the Government has been unable as yet to submit the proposed law to Parliament although the text of the draft is ready. The Government hoped to be able to submit it and obtain its passage during the coming session beginning on March 7th. After the passage of the law the negotiations for the Naturalization Convention could be taken up.

Regarding the Yugoslav Government's desire to negotiate a new Extradition Convention, Dr. Ribarj stated that the need for this lay in the fact that criminal legislation in the territories formerly belonging to Austria-Hungary and now forming part of Yugoslavia, differed considerably from Serbian criminal legislation. It was desired to make the new Convention accord more completely with the various legislations now in force in Yugoslavia. He would inform me later in writing more specifically concerning this matter.

Regarding a Convention for Mutual Judicial Assistance, I enclose copies of two Conventions negotiated between Yugoslavia and Italy which Dr. Ribarj gave me and which he stated might be considered as types of the Mutual Assistance Conventions negotiated by his Government. He intended to propose somewhat similar Conventions for negotiation with the Government of the United States. In connection with this matter I did not fail to inform Dr. Ribarj of the Department's attitude regarding a Convention of this nature and I informed him,

as

as directed by your Instruction, that the Government of the United States holds, for the present, in reserve its decision as to whether it will enter into negotiations for the conclusion of a Convention providing for mutual judicial assistance.

Regarding the negotiation of a Convention of Commerce and Navigation and Consular Convention, I beg to state that meeting Dr. Ribarj a few days before the receipt of your Instruction, he informed me that he was working upon drafts for these two Conventions. Upon the receipt of your Instruction, I accordingly thought it proper to bring to his attention the substance of that portion of it touching this matter. Dr. Ribarj replied that the Yugoslav-Italian treaty negotiations would in any case have prevented him from submitting his drafts to the Legation for some time and that he would be happy now to await the submission to his Government of a draft for a general treaty of commerce, navigation and consular rights based upon the same general lines as the treaty concluded between the United States and Germany.

I have the honor to be, Sir,

Your obedient servant,

H. Percival Dodge

H. Percival Dodge,
American Minister.

Enclosures:

1. Copy of Convention between Yugoslavia and Italy concerning the juridical and judicial protection of their respective subjects; only one copy available.

2. Copy of Convention between the same concerning the execution of judgments; only one copy available.

File No. 130 - Quintuplicate.

No. 522

United States of America

DEPARTMENT OF STATE

to whom these presents shall come, Greeting:

That the document hereunto annexed is a true and complete
the translation of a note verbale dated May 19, 1934 from
slav Ministry for Foreign Affairs to the American Legation
de, which was transmitted to the Department of State
losure to Despatch No. 127 of May 25, 1934 from the
n Belgrade, the original of which is on file in the
of State.

In testimony whereof, I, H. FREEMAN MATTHEWS,
Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this third day of February, 1953.

H. Freeman Matthews
Acting Secretary of State.

By Barbara Hartman
Authentication Officer, Department of State.

U. S. GOVERN... OFF... 80-4

KINGDOM OF YUGOSLAVIA

Ministry for Foreign Affairs.

P.No. 13524 - IV.

Enclosure to Despatch No. 127 of May 25, 1934, from the Legation in Belgrade.

Translation Note verbale.

With reference to the American Legation's verbal note No. 59 of March 12, 1934, relating to a proposal made to conclude a supplemental agreement to the Convention for the Extradition of Criminals concluded between the Kingdom of Serbia and the United States on October 12/25, 1901, the Royal Ministry for Foreign Affairs has the honor to inform the Legation that in the opinion of the Royal Ministry of Justice the extradition of criminals for offenses mentioned in the aforementioned note is already provided for under Article II, No. 7, of the above cited Convention, which grants extradition for the following:

"Fraud or breach of trust committed by the manager, or a member or an official of a company, if such action is punishable under the laws of both countries, and if the amount of the sum, or the value of the property which was appropriated, amount to at least one thousand dinars or two hundred gold dollars."

According to this provision, it is not necessary that the act be punishable under the Penal Code,- it is sufficient that the punishment be prescribed by a special law.

As "crimes or offenses against bankruptcy laws" are punishable by virtue of the provisions of the Penal Code of the Kingdom (Article 344 and the following), it will be sufficient in each particular case, that the competent American authorities propound a legalized extract of the legislative provisions indicating that such crimes are also punished under the laws of the United States of America, and the extradition requested will, in such case, be granted according to the Convention for extradition of criminals of 1901, which is now in force.

Belgrade, May 19, 1934.

(Seal)

To the

Legation of the United States of America,

Beograd.

Appendix B-1